



California Fair Political Practices Commission

May 12, 1989

Robert E. Leidigh
Olson, Connelly, Hagel and Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-89-227

Dear Mr. Leidigh:

This is in response to your letter requesting advice on behalf of the Senate Rules Committee regarding application of the mass mailing provisions of the Political Reform Act (the "Act").^{1/} This letter confirms the telephone advice we provided to you on April 18, 1989.

QUESTION

Are the two letters submitted with your request for advice substantially similar for purposes of the mass mailing provisions of the Act?

CONCLUSION

The two letters submitted with your request for advice are not substantially similar for purposes of the mass mailing provisions of the Act.

FACTS

Senator David Roberti has introduced SB 292 which would ban the manufacture and sale of assault weapons. The bill has been subject to great public controversy and was passed by the Senate with substantial revision. A companion bill passed by the Assembly with similar modifications.

^{1/} Government Code Section 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Senator Roberti now wishes to contact his constituents to inform them of the current status of the bill and to garner public support for the assault weapon bill. He has drafted two letters aimed at two different audiences, both letters discussing the assault weapons bill. You have asked whether these letters are substantially similar for the purposes of Section 82041.5 and Regulation 18901.

ANALYSIS

Government Code Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. Section 82041.5 defines a mass mailing as more than two hundred substantially similar pieces of mail sent in a calendar month. "Substantially similar" is defined in Regulation 18901(i) (copy enclosed) as follows:

(1) Pieces of mail are "substantially similar" if their text is substantially the same, with only minor changes or alterations for the purpose of personalizing the piece of mail.

You have presented for consideration two letters dealing with the assault weapons bill. Both letters provide substantially the same information. However, while the same topics are covered by both letters, the text of the letters is different. Moreover, the letters are tailored to two different audiences with different sentiments toward the assault weapons bill. This is reflected in the text of the letters.

The differences in the two letters are more than minor changes or alterations for the purpose of personalizing the letters. For example, where two letters differ only in specific facts or references concerning the intended recipient, and are otherwise interchangeable, the letters are substantially similar. (Connelly Advice Letter, No. A-89-107, copy enclosed.)

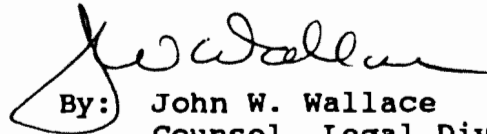
The assault weapons bill letters are not interchangeable. If each letter were sent to the audience for which the other was intended, clearly they would convey an unfavorable message and elicit a negative response. Consequently, the two letters submitted with your request for advice are not substantially similar for purposes of the mass mailing provisions of the Act.

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I trust that this answers your question. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

A handwritten signature in dark ink, appearing to read "John W. Wallace", is written over the typed name. The signature is fluid and cursive.

By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

FPPC
Apr 13 1 20 PM '89

Law Offices of

OLSON, CONNELLY, HAGEL & FONG

April 13, 1989

Kathryn E. Donovan
Acting General Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 "J" Street
Sacramento, California 95814

**RE: REQUEST FOR FORMAL WRITTEN ADVICE; REGULATION
18901 - SUBSTANTIALLY SIMILAR TEXT**

Dear Ms. Donovan:

I write on behalf of my client the Senate Rules Committee. The Rules Committee has retained me to assist it in complying with the requirements of Government Code Section 89001 and Commission Regulation 18901. Mass mailings in the Senate are generally made through the Rules Committee.

My client has become aware of a recent Commission staff advice letter, No. A-89-107. That letter responded to questions from the Assembly Rules Committee regarding the issue of when two letters are "substantially similar" pieces of mail for purposes of Government Code Section 82041.5.

When letters are "substantially similar" they must be cumulated for purposes of determining whether they constitute a "mass mailing" for purposes of Government Code Section 89001.

Commission Regulation 18901(i) provides the standard for determining when pieces of mail are "substantially similar."

(i) (1) Pieces of mail are "substantially similar" if their text is substantially the same, with only minor changes or alterations for purposes of personalizing the piece of mail.

(2) Form letters, or newsletters in which only the addressee information is changed, are "substantially similar."

(Emphasis added.)

As originally noticed by the Commission, Regulation 18901 contained additional language regarding the "content" of mail. Pieces of mail were "substantially similar" if their "content" was substantially similar.

LANCE H. OLSON
BRUCE J. HAGEL
LEROY Y. FONG
ROBERT E. LEIDIGH

OF COUNSEL
LLOYD G. CONNELLY, Member
California State Legislature

300 Capitol Mall, Suite 350
Sacramento, California 95814
TELEPHONE: (916) 442-2952
FAX: (916) 442-1280

Letter to Kathryn E. Donovan
April 13, 1989
Page Two

The "content" language was deleted from the final version of the regulation. It was our understanding that this was done so that the Commission would not become some sort of "censor" for all mass mailings, requiring a case by case review of each proposed piece of mail.

Given the foregoing, we became concerned by reading the analysis contained in Advice Letter No. A-89-107. In that letter, the staff has concluded as follows:

Consequently, we advise that the texts of mailings are substantially similar where the substance of the letters has a general likeness or resemblance, or the same fundamental essence or purpose.

* * *

Applying these standards to the letters by Assemblymember Isenberg we conclude that the three letters announcing introduction of AB 60 are substantially similar. Each letter includes the same or similar language, conveys a similar essential message, and has the same fundamental purpose. Any changes in the letter are for the purpose of personalizing them based on the characteristics of the persons to whom they are sent. . . .
(Emphasis added.)

The analysis appears to read the word "content" back into Regulation 18901. As a result, I have been asked by the Senate Rules Committee to submit two letters to you for your determination of whether they are "substantially similar" in text so as to constitute the same mailing.

FACTUAL BACKGROUND

Senator David Roberti has introduced controversial legislation to ban the manufacture and sale of "assault weapons." The bill is SB 292, which originally contained a general assault weapons ban. It passed the Senate in that form. Last week, it was amended by the Assembly committee to instead include a specific list of weapons which would be banned.

Senator Roberti's bill has received widespread publicity through the news media, as has a companion bill by Assemblyman Mike Roos (AB 357). AB 357 passed the Assembly with a list of specific weapons which would be banned. Obviously, the interrelationship of the two bills can result in confusion among members of the public who are interested in these two measures.

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In the past, Senator Roberti has received many letters from the public expressing support or opposition to SB 292. Many of the writers are unaware of Regulation 18901. Hence, they did not specifically request "continuing information" regarding SB 292. In accordance with the regulation, Senator Roberti has only sent a one-time response to those who did not request "continuing information."

Given the dramatic change in the content of his bill, Senator Roberti now wishes to correspond with some of those who have written to him before the bill was amended. Among those correspondents who did not seek "continuing information" are two distinct groups.

One group strongly supported his original bill, which did not enumerate the specific weapons to be banned. They favor this approach because the legislation will not require amendment as new weapons reach the market.

The second group opposed the original version of the bill because they feared that weapons which they wished to own might be caught up in a general ban. While this group supports restrictions on certain weapons, they are philosophically opposed to a general ban. They might be willing to support his bill now that it has been amended.

Senator Roberti wishes to send 200 copies of each of the two enclosed letters in one calendar month (April). The first letter will be sent to the first group -- those who supported his original bill. The second letter will be sent to the second group, which opposed his original bill, but might be willing to support its amended version. Each letter will include a copy of the amended bill.

As you can see from the enclosed, each letter is different in text. The letters are designed for two different audiences. One is designed to persuade the first group to continue to support SB 292, even though it has been narrowed to a specific list of banned weapons. The second letter is designed to enlist the support of those who opposed a general ban, but who might be supportive of a more narrow, specific ban.

Each letter will be personalized by inserting the individual addressee's name and address information. Otherwise, the letters will be form letters. Obviously, time is of the essence in reaching these interested individuals so that they may make their views known on this important subject in a timely fashion.

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QUESTION

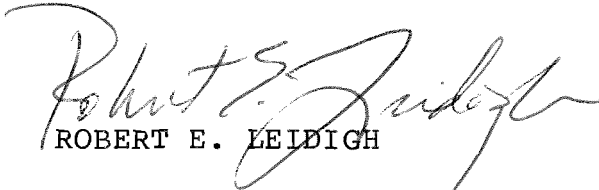
Are the two enclosed letters "substantially similar" in text within the meaning of Regulation 18901?

CONCLUSION

Because time is of the essence, we request that you provide at least a telephone response to this request as soon as possible, preferably by April 18, so that the mailing may go out by the middle of that week. A formal written response may follow in the normal course of your workload.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG



ROBERT E. LEIDIGH

cc: Senator David Roberti, Chair
Senate Rules Committee

Enclosures

Letter 1

Dear :

On April 4, 1989, the Assembly Public Safety Committee heard my Senate Bill 292 regarding the ban of military assault weapons. As a person who has contacted me in support of this key legislation, I wanted to let you know the results of that hearing.

SB 292 was passed out of committee 5-3 and will be heard on the Assembly Floor the week of April 17. However, the legislation was significantly amended in committee. As you recall, the original legislation called for a general ban on assault weapons. The amended bill contains a specific list of prohibited assault weapons. It also increases penalties against criminals who use assault weapons. I have enclosed a copy of the bill for your information.

I am disappointed that we were not able to include the generic description of assault weapons along with the commission to regulate assault weapons developed in the future in the bill. The votes were simply not there in Assembly Public Safety.

However, I still firmly believe this is a significant step towards eliminating these types of weapons from the streets. Many law abiding hunters and sportsmen agree that there is no reason for anyone to use or possess military assault weapons. Law enforcement believes this is a major step towards preventing future massacres in our schoolyards and the killings that are occurring every day on our urban streets.

I trust that I can count on your continued support of this measure. Together we can do what is right and proper for public safety in our state.

Sincerely,

DAVID ROBERTI

DR/cknl

enclosure

Letter 2

Dear :

The Assembly Public Safety Committee heard my Senate Bill 292 regarding the ban of military assault weapons last week. The bill was passed by the committee after substantial amendments. I think those amendments may have addressed some of the concerns you previously shared with me about the bill.

As you know, the bill originally provided a general description of a paramilitary assault weapon and a commission to exempt specific weapons found to be legitimate sports or recreational firearms.

As amended, the commission was eliminated and a specific list of prohibited assault weapons was included. I have enclosed a copy of the bill as amended so you can see specifically what the bill does.

Although the bill is not as broad as originally introduced, I believe this is a necessary compromise in the effort to shut down the supply of assault weapons to criminals. As I have previously stated to you, I have no intention of banning or regulating legitimate hunting and sporting weapons. I think SB 292 in its current form accomplishes that goal. I hope you agree.

One of the rewarding aspects of tackling an issue as controversial as this one, is the great diversity of people who have been involved. Together we have crafted legislation for the benefit of all Californians. Thank you for your participation in the process. I hope with these changes I can gain your support.

Sincerely,

DAVID ROBERTI

DR:CK:ck

encl.



California Fair Political Practices Commission

April 18, 1989

Robert E. Leidigh
Olson, Connelly, Hagel & Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Letter No. 89-227

Dear Mr. Leidigh:

Your letter requesting advice under the Political Reform Act was received on April 13, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths by *plh*
Diane M. Griffiths
General Counsel

DMG:plh



OFFICE OF THE
CITY ATTORNEY

193 E. Fifth Street
PO Box 3400
Chico, CA 95927
(916) 895-4325

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June 16, 1988
CA/PEND/20:34-4

Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, CA 95814

Attention: Legal Assistance Division

This is a request for an opinion on the propriety of a city councilmember participating in council deliberations concerning adoption of park facility and street facility fees where such councilmember has an interest in property which may become subject to such fees. The councilmember's name is Bill Nichols and he has authorized this request.

Specifically, the facts are as follows. A city councilmember is trustee and one of the beneficiaries of a trust which owns commercial property on which a building was recently substantially improved. The property is configured so that additional improvements could be made; however, there are no plans to do so at this time.

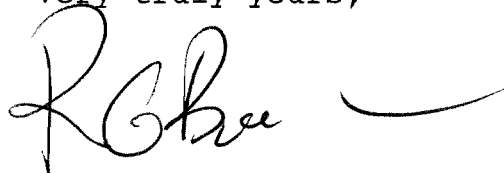
In addition, the same trust owns additional property, located in the county, which was recently rezoned for residential development. The property is in the process of being annexed to the City, and after such annexation, the councilmember plans to subdivide the property, install streets and then sell various parcels to third parties who will secure building permits for the parcels.

The city council is presently considering adopting park facility fees and may consider increasing existing street facility fees. Depending on the city council's decision, the park facility fees may be levied on only residential properties or both residential and commercial/industrial properties. Such fees would be collected at the time building permits are issued. The street facility fees are currently levied only on residential properties.

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The specific issues I would like you to address are: Is the councilmember precluded from participating in the council's deliberations (1) initially enacting the park facility fees; and/or (2) considering an increase in the existing street facility fees?

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Boehm", followed by a long horizontal flourish.

Robert G. Boehm
City Attorney

EEM:sg

cc: City Manager
City Clerk
Councilmember Bill Nichols
P.O. Box 6507
Chico, CA 95927



California Fair Political Practices Commission

June 20, 1988

Robert G. Boehm
City Attorney
P.O. Box 3420
Chico, CA 95927

Re: 88-227

Dear Mr. Boehm:

Your letter requesting advice under the Political Reform Act was received on June 17, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads 'Diane M. Griffiths'.

Diane M. Griffiths
General Counsel

DMG:plh
Bill Nichols, Councilmember